UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

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In Re:	) Case No. 19-30088
	) Chapter 11
PG&E CORPORATION AND PACIFIC GAS AND ELECTRIC COMPANY	)
	) San Francisco, California
	) Tuesday, December 15, 2020
Debtor.	) 10:00 AM
_____	)

REORGANIZED DEBTORS' TWENTY-FIFTH OMNIBUS OBJECTION TO CLAIMS (AMENDED AND SUPERSEDED CLAIMS) FILED BY PG&E CORPORATION [9418]

REORGANIZED DEBTORS' TWENTY-SIXTH OMNIBUS OBJECTION TO CLAIMS (DUPLICATIVE CLAIMS) FILED BY PG&E CORPORATION [9421]

REORGANIZED DEBTORS' TWENTY-SEVENTH OMNIBUS OBJECTION TO CLAIMS (INCORRECT DEBTOR CLAIMS) FILED BY PG&E CORPORATION [9424]

REORGANIZED DEBTORS' TWENTY-EIGHTH OMNIBUS OBJECTION TO CLAIMS (BOOKS AND RECORDS CLAIMS) FILED BY PG&E CORPORATION [9427]

REORGANIZED DEBTORS' TWENTY-NINTH OMNIBUS OBJECTION TO CLAIMS (SATISFIED CLAIMS) PG&E CORPORATION [9430]

REORGANIZED DEBTORS' THIRTIETH OMNIBUS OBJECTION TO CLAIMS (NO LIABILITY CLAIMS) FILED BY PG&E CORPORATION [9433]

REORGANIZED DEBTORS' THIRTY-FIRST OMNIBUS OBJECTION TO CLAIMS (CUSTOMER NO LIABILITY CLAIMS) FILED BY PG&E CORPORATION [9436]

REORGANIZED DEBTORS' THIRTY-SECOND OMNIBUS OBJECTION TO CLAIMS (CUSTOMER NO LIABILITY CLAIMS) FILED BY PG&E CORPORATION [9439]

REORGANIZED DEBTORS' THIRTY-THIRD OMNIBUS OBJECTION TO CLAIMS (CUSTOMER NO LIABILITY CLAIMS) FILED BY PG&E CORPORATION [9441]

REORGANIZED DEBTORS' THIRTY-FOURTH OMNIBUS OBJECTION TO CLAIMS (CUSTOMER NO LIABILITY CLAIMS) FILED BY PG&E CORPORATION [9443]

REORGANIZED DEBTORS' THIRTY-FIFTH OMNIBUS OBJECTION TO CLAIMS (CUSTOMER NO LIABILITY CLAIMS) FILED BY PG&E CORPORATION [9445]

REORGANIZED DEBTORS' THIRTY-SIXTH OMNIBUS OBJECTION TO CLAIMS (CUSTOMER NO LIABILITY CLAIMS) FILED BY PG&E CORPORATION [9447]

REORGANIZED DEBTORS' THIRTY-SEVENTH OMNIBUS OBJECTION TO CLAIMS (CUSTOMER NO LIABILITY CLAIMS) FILED BY PG&E CORPORATION [9449]

REORGANIZED DEBTORS' THIRTY-EIGHTH OMNIBUS OBJECTION TO CLAIMS (CUSTOMER NO LIABILITY CLAIMS) FILED BY PG&E CORPORATION [9451]

REORGANIZED DEBTORS' THIRTY-NINTH OMNIBUS OBJECTION TO CLAIMS (CUSTOMER NO LIABILITY CLAIMS) FILED BY PG&E CORPORATION [9453]

MOTION PURSUANT TO FED. R. BANKR. PROC. 7015 AND 7017 TO JOIN REAL PARTY IN INTEREST FOR CLAIM PREVIOUSLY FILED; OR, IN THE ALTERNATIVE, TO ENLARGE TIME TO FILE PROOF OF CLAIM PURSUANT TO FED. R. BANKR PROC. 9006(B)(1) FILED BY MOLIN-WILCOXEN CAMP FIRE VICTIMS GROUP [9481]

SECURITIES LEAD PLAINTIFF'S MOTION PURSUANT TO BANKRUPTCY CODE SECTIONS 503(B)(3)(D) AND 503(B)(4) FOR ALLOWANCE AND PAYMENT OF FEES AND EXPENSES FILED BY SECURITIES LEAD PLAINTIFF AND THE PROPOSED CLASS [8950]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

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PG&E Corporation and Pacific Gas and Electric Company

SAN FRANCISCO, CALIFORNIA, TUESDAY, DECEMBER 15, 2020, 10:00 AM

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(Call to order of the Court.)

THE COURT REPORTER: Court is now in session. The Honorable Dennis Montali presiding. Calling the matter of PG&E Corporation.

One moment, Your Honor, while I bring in Ms. Silveira in.

MS. SILVEIRA: Good morning, Your Honor.

THE COURT: Good morning, Ms. Silveira. Can you hear me?

MS. SILVEIRA: Yes.

THE COURT: Okay. Just state your appearance for the record.

MS. SILVEIRA: Dara Silveira, Keller Benvenutti Kim, on behalf of the reorganized debtors.

THE COURT: Okay. Ms. Silveira, you can --

Well, let me make an announcement for all parties on the call, or on the hearing. The debtor had a number of omnibus objections on originally for today, and only one, party by the name of Elor, has the matter been left for today. Every other so-called omnibus objection has been continued to dates either in January or March.

Ms. Silveira, have I got it right? Have you got everybody accounted for that way, one or the other?

MS. SILVEIRA: Yes. Yes, Your Honor.

THE COURT: Okay. So if there is anyone who's raising a hand because you think you intended to be heard today on the omnibus objection, I'm not going to call on you because we're not dealing with that. If there is someone signed in today who is appearing for Yair, Y-A-I-R, Elor, E-L-O-R, please raise your hand and I'll identify -- I'll call you and bring you in.

Now, I see a Tayisha Jeffy (phonetic) with a hand up.

Ms. Jeffy, if you are not on the Elor matter, please take down your hand because I don't intend to call on you.

All right. Ms. Silveira, I reviewed the Elor objection. I'm not sure what to make of it. Do you have any indication of what's behind this claim?

MS. SILVEIRA: Your Honor, to the best of my understanding, Mr. Elor is taking issue with the debtors' rates, not necessarily with respect to the rates he himself is being charged; it seems to me slightly more generally. He makes some reference to being on disability, but it wasn't clear, from the face of the response, whether that was with respect to him or someone else.

As we laid out in the thirty-third omnibus objection, we were able to confirm that Mr. Elor was or is a customer but have not identified any pre-petition billing issues, CPUC complaints, or any other pre-petition claims, so it's our position that there's no basis for liability, and the response

as we've provided doesn't lay one out.

THE COURT: Okay. Well, I reviewed the claim and also the handwritten attachment, and I sort of came to the conclusion. I'm going to go ahead and sustain the objection because it doesn't appear to be a recognizable claim.

And if anyone is listening on behalf of Mr. Elor, Mr. and Mrs. Elor, they presumably can take any grievance that they have about claims generally, or rates generally, rather, to the Public Utilities Commissioner directed at the company. It doesn't seem to -- there doesn't seem to be any basis for the claim being treated as one of the claims being held under the confirmed plan.

So with that, we can go ahead and process that in the normal course, and that will be the end of that, okay?

MS. SILVEIRA: Yes. Yes, Your Honor. Thank you very much.

THE COURT: Thank you. And we're not going to keep you on the screen, unless you're going to be participating in today's motion, are you?

MS. SILVEIRA: No, Your Honor, I wouldn't.

THE COURT: Okay, then. We're going to put you back in the audience, and you're free to go. Thank you for your help on --

MS. SILVEIRA: Thank you.

THE COURT: And thank you for all your coordination of

all the numerous omnibus claims; that's quite a handful.

MS. SILVEIRA: Certainly, Your Honor. Thank you very much.

THE COURT: Thank you.

MS. SILVEIRA: Bye.

THE COURT: All right. For everyone else watching, the only matter on for the calendar now is the so-called 503 motion, and Ms. Parada will bring in the principal counsel to argue that motion, and I'll see if we've got everybody accounted for there.

Mr. Karotkin, good morning. Happy holidays.

MR. KAROTKIN: Yes, to you, too, sir.

I think Ms. Liou will be handling the main argument for the debtors.

THE COURT: Oh, not Mr. Slack?

MR. KAROTKIN: I'd like to remain, if we could bring her in as well?

THE COURT: Sure. I thought Mr. Slack would be here.

All right. Mr. Etkin, good morning.

MR. ETKIN: Good morning, Your Honor.

THE COURT: And is -- Ms. Liou, good morning.

MS. LIOU: Hi. Good morning, Your Honor.

THE COURT: And Mr. Etkin, is Mr. Dubbs coming in today, or not?

MR. ETKIN: Mr. Dubbs is coming in as well, Your

Honor. I think I'll probably be handling it primarily, but if it's okay with the Court, if we could bring Mr. Dubbs in as well, that would be helpful.

THE COURT: Well, that's what we were expecting. Ms. Parada, you do have him in the audience, don't you?

THE COURT REPORTER: Your Honor, I do not see Mr. Dubbs, unless he signed in in a different name; if he could raise a hand.

THE COURT: Mr. Dubbs, are you incognito, under a phone number rather than a name? There you go. We'll just -- I thought we had a hand go up.

THE COURT REPORTER: Yes, and it -- and then it's lowered. I don't see a hand raised for Mr. Dubbs.

THE COURT: Well, I saw one go up again and then down again. Hold on everybody.

Mr. Dubbs, are you going to join us or not today? Okay. Hand up again, but took it down again. Okay.

What did you do, scare him off, Mr. Karotkin and Ms. Liou? What did you do to your opponent here?

All right. Mr. Dubbs, one more try. Please put up your hand if you want to come in to the courtroom.

Well, Mr. Etkin, you're going to get the duty, I think.

MR. ETKIN: I think that he might be having technical difficulties, Your Honor, but unfortunately, I can't help him

with that.

THE COURT: Well, as we know, I've had my share of technical difficulties; keep my fingers crossed today. Well, let's just wait a minute and see.

Are you in touch with him directly by a cell phone or a text?

MR. ETKIN: Your Honor, I spoke with him earlier this morning. I can certainly try to send him an email, but --

THE COURT: Well, if you want to call him on a landline or something, I mean, I don't mind waiting.

MR. ETKIN: Okay. I appreciate that, Your Honor. Let me give that a try. Excuse me for one moment.

THE COURT: Yeah, you might want to turn your mic off, so we don't listen to you.

MR. ETKIN: Yeah.

THE COURT: Well, Mr. Karotkin, you wanted to stay on the screen for the argument?

MR. KAROTKIN: Yes, sir.

THE COURT: Okay. All right. Well, you can both stand down for a minute and we'll just give him a little bit of time, here.

MR. ETKIN: He has the hand-raise feature, so I can't offer an explanation as to why that's not working out.

THE COURT: Well, hold on.

Okay. Someone in your office there --

MR. ETKIN: We asked --

THE COURT: -- (audio interference) --

MR. ETKIN: I actually tried to get this problem fixed this morning, but obviously was unsuccessful. I appreciate the Court's generosity with its time.

THE COURT: Well, maybe you have a teenager somewhere in the house. They can fix it.

There you go. There's your name. All right.

All right. For Mr. Dubbs and Mr. Etkin, you saw my order, I trust, and therefore you've got a half an hour, and I assume you want to save a portion of that for rebuttal, and Ms. Liou is going to argue for the debtors. How much time shall we reserve for you?

MR. ETKIN: Your Honor, we'd like to reserve ten minutes for rebuttal, please.

THE COURT: Okay. Okay. You're up.

MR. ETKIN: Okay. Thank you, Your Honor.

And we understand that the Court has undertaken a detailed review of the papers, and I intend to focus on certain arguments made by the reorganized debtors in their opposition, but primarily on the Court's questions in the December 11th order. And as is obvious, Your Honor, only one objection was filed in connection with PERA's substantial contribution application.

Your Honor, the efforts of PERA and its counsel over

the eighteen months of these cases prior to the effective date have been, for the most part, in plain sight. And the Court is in a position, actually probably the best position, to evaluate those efforts in the context of this motion. There was, obviously, material work done outside of the courtroom, but the thrust of our efforts has been readily apparent to the Court.

As the Court indicated at the June 24th hearing on the debtors' original omnibus claims procedures motion, you've been dealing with us and the constituency that we've been speaking for and acting for for a long, long time -- from the outset of the case -- with respect to all of the important substantive matters we outline in the motion. The Court actually referenced much of that, in terms of the plan issues, during the colloquy during that hearing, so I don't believe we need to spend much time on that.

The fact is that we were never given a seat at the table, and all that we have done to provide a platform for an important constituency in these cases, and vindicate their rights, was accomplished without ultimately jeopardizing confirmation or the extraordinarily tight time frame that was required.

At the confirmation hearing itself for one of the sessions, on June 19th, when we advised the Court of the outcome of the mediation with Judge Newsome, Your Honor noted the compromises reached with respect to the improved treatment

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methodology for securities claimants and congratulated the parties for solving the problems.

But those confirmation problems, Your Honor, several of which the Court identified as issues of first impression, and the notice and due process violations, the form of the notice, the disclosure statement issues, the classification of the securities claimants, the treatment of those claims, the attempts to shut down the securities litigation would never have been resolved, and certainly not resolved in a timely manner, but for the efforts of PERA and its counsel and their advocacy.

Now, the theme of the reorganized debtors' opposition appears to be that PERA was solely motivated by self-interest and that, had we stayed silent, the debtors could have simply steamrolled securities claimants and wouldn't have had to deal with those issues at all.

But the fact is that a plan was confirmed. Securities claimants were given an opportunity to file claims, which they did by the thousands, those claims were recognized and classified, and their distribution was enhanced through the significant efforts of PERA and their counsel -- and this is very important Your Honor -- without costing unsecured creditors and the fire victims one dollar. So, Your Honor, that is the lens through which we would ask the Court to view PERA's application.

Now, let me get to the Court's questions specifically.

THE COURT: Yeah, I should give you a clue. The question comes, in part, from my perception about the nonbankruptcy world and class action. I realize that lots of class actions settle, but some of them must not. And if you went all the way to trial and got a defense verdict, I'm pretty sure you wouldn't get paid anything, would you?

MR. ETKIN: Not by the district court, Your Honor.

THE COURT: Right. Right. No, I'm talking about a hypothetical, not the --

MR. ETKIN: Right.

THE COURT: -- (indiscernible).

MR. ETKIN: Under those circumstances.

THE COURT: Right.

MR. ETKIN: Not in connection with your standard class action and how fees are determined in those cases.

THE COURT: Right. And so my question and the predicate here for my question is since nobody -- not a single claimant has been paid a single penny yet, even if I were persuaded that your 503 argument was credible on the face of it, could I award something at a time when none of the constituents that you speak for have gotten a penny, or haven't even become entitled to a penny?

MR. ETKIN: Well, Your Honor, we believe the answer to that question is yes because the hypothetical that you pose

involved what would happen in the district court. And the circumstances here that dictates a 503 and how reasonable fees are determined is set forth, we believe, in the Bankruptcy Code. In fact, Your Honor, I think the reorganized debtors' opposition maintains that the same principles for assessing the reasonableness of retained professionals' fees should be applied to substantial contribution applications, and we agree. We agree with that.

So the analysis should comport with Section 330 of the Bankruptcy Code, which is what the debtors argue and what we believe should be the case as well.

THE COURT: Okay. But think about it. Let's test it from my point of view. Your claim, if I'm not mistaken, is upwards of four million -- four-and-a-half million some dollars. Substantial money. If I awarded that and you were paid it, and then at some day in the future the defendants, whether the debtor defendants -- leave aside the officer and director -- if the defendants never had to pay a penny, then your efforts would have gone -- it would be a bizarre result, it seems to me, that you would -- you would get a substantial contribution that didn't produce any measurable benefit for the benefit of the people you've acted for.

MR. ETKIN: Well, Your Honor, you have to draw the distinction, I believe, between the claims asserted against the nondebtor defendants in the district court and the claims that

have been filed, individual claims, all 7,000-plus of them, that have been filed in the bankruptcy case. Again, those 7,000 claimants and what they recover in the bankruptcy case, where we do not have a certified class, where we do not have an order of this Court applying Rule 7023, those claimants move forward, at least based upon Your Honor's recent ruling which denied the most recent 7023 application and granted the debtors' application with respect to ADR procedures, they would go ahead individually and be resolved individually in the bankruptcy case, potentially. So it's a very different --

THE COURT: (Audio interference) you're not answer -- you're not getting my point. What if they -- the mediation of them was unsuccessful and it went to the court, the bankruptcy court, and the court determined that there was no liability? And so that's why -- I'm not trying to focus on what the actual district court and the actual action pending in San Jose is; I'm talking about this case.

So your argument here is you have brought about a benefit for the benefit -- a result for the good of these 7,000 people here. But if all 7,000 of them strike out, then should their lawyers be paid?

I understand your point. You need to use your time as you wish, not --

MR. ETKIN: Well, no, Your Honor, let me address that straight up. It's Section 330 and Section 503 do not involve

payment on a contingency fee basis.

THE COURT: Okay.

MR. ETKIN: This is not a contingency case. This is measured by virtue of what was done, what was accomplished, not necessarily with the benefit of hindsight, which is what the cases hold in connection with 330.

There are probably many situations where, ultimately, unsecured creditors' recovery may hinge on post-confirmation litigation that's brought and the recoveries in post-confirmation litigation, and that may be successful, but it may not. But you wouldn't hold off on awarding fees under 503 or under 330 based upon whether it pans out or it doesn't.

And quite frankly, Your Honor, the debtors are offering to mediate individual claims. I would venture to say that they're not offering to mediate, only to tell each of these claimants that your claims are worth nothing, go home. So it's --

THE COURT: No, I agree with you, Mr. Etkin. I understand that. And the debtor has committed, under a proposal, to make offers. And if even one of those offers is accepted, then my hypothetical fails because somebody's gotten paid something.

Go ahead.

MR. ETKIN: Right.

THE COURT: So let's use your time --

MR. ETKIN: Your Honor, utilizing the but-for test, the bottom line, really, is that absent what we've accomplished in this case, these 7,000-plus claimants would be guaranteed zero because they would have never had an opportunity to even pursue their claims in the case. And of course it's not -- as set forth in our papers, it's not just what we accomplished on that score, but it's also given our participation at the disclosure statement and plan process, which ultimately enhanced the treatment of securities claims under the plan. So again, Your Honor, with respect to your first question, we believe that the answer is yes.

But one other aspect of that, Your Honor, is that when you look at a case like Texaco, which we cite, that court held that a substantial contribution was appropriate regardless of whether the efforts were fully successful or not. And in the American Plumbing case, the contribution can be monetary or nonmonetary and that the benefits should not be narrowly confined to dollars and cents. So even though we believe that our contribution has tangible benefit and significant benefit, it's not limited to a monetary benefit or a guarantee as to the outcome.

Your Honor, as to your question two, we agree that substantial contribution in the case is the standard, and that's the language of 503. And we would look to the Mirant decision as a prime example of that. We have also discussed in

our motion and the reply how our efforts have benefitted the estate as well.

Your Honor, benefitting the estate in the confirmation process is not measured by how compliant you are with the will of the debtors and how the debtors want to see the case pan out. Each constituency acts and takes positions for the benefit of their stakeholders. Those positions are hopefully reflected in the final product and, in this case, were reflected in the final product, and the plan was timely confirmed. The fact that we were consistently on the outside looking in just made our job more difficult, quite frankly.

Your Honor, again, on June 5th the Court -- which was one of the confirmation hearing dates -- the Court identified the issues that we had raised, several of the issues that we had raised, as issues of first impression, and that needed to be addressed. And then, after some argument, the Court directed the parties to mediation.

At that June 8th hearing, Your Honor, where you did direct the mediation before Judge Newsome, you referred to these issues as big-ticket items that needed to be mediated and that you wanted Judge Newsome to mediate these issues for the parties, and the sooner the better, and you additionally outlined that you had some concerns over these issues.

Well, we took all that to heart. We engaged in mediation in the midst of a contested confirmation hearing, and

we got each and every issue resolved, save one. And the one issue that we put before the Court ultimately was not an issue that we agreed would jeopardize confirmation, and the Court called balls and strikes with respect to that one issue that remained after the mediation before Judge Newsome.

In terms of question three, Your Honor, we don't believe that the outcome of the district court action has any relevance to this motion. I think I touched upon that already in my earlier remarks.

THE COURT: Well, the question was prompted by the argument from the debtor that you should look to the district court for your compensation, and so that's --

MR. ETKIN: Well, Your Honor, in the district court, we're litigating against nondebtor defendants, and our recovery in the district court will be based upon a recovery from nondebtor defendants. The claims against the debtor are before Your Honor. They would never have been before Your Honor but for our efforts during the course of the case.

They are claims against the debtor. They are legislated by the terms of the plan. The recovery is based upon and governed by the plan provisions, including the improvements that were negotiated with respect to that recovery, and they'll be determined, ultimately, by this Court, subject to any appeals, unless something occurs that we're currently not aware of.

Your Honor, the claims against the nondebtors will go forward in the district court and will be resolved before the district court. They have not been enjoined by the Court, despite several efforts to do so, and they are going forward. So there's a rather clear line between the claims against the debtors and the efforts that were put forward during the eighteen months of these cases through the effective date, regarding dealing with the claims, the securities claims against the debtors, and the treatment of those claims, ultimately, under the plan.

So what happens with respect to nondebtor parties and recoveries against nondebtor parties, that's what's occurring before the district court, and that's what the district court will evaluate, ultimately.

THE COURT: Has anything happened since we last met? District judge decided anything yet?

MR. ETKIN: Unfortunately, the answer to that is no, Your Honor.

THE COURT: (Audio interference).

MR. ETKIN: We have not gotten any decision --

THE COURT: Wow. Okay.

MR. ETKIN: -- not from the district court. And it's been quite some time, but we're still waiting.

Your Honor, moving on to your question four. It's been a while since I've recited the four questions, Your Honor.

THE COURT: Well, question four was more of -- there's no question mark on number four --

MR. ETKIN: No, I know.

THE COURT: -- it's just a statement.

MR. ETKIN: But I wanted to comment on what I believe is the point that you're making.

The solvency of these estates, Your Honor, created the opportunity for 510(b) claimants to recover for the damages that they suffered in connection with their purchase of the debtors' publicly traded securities. That circumstance, as Your Honor has noted often, is very much the exception and not the rule. And absent solvency and the fact that 510(b) claimants are in the money, our efforts and the issues would have been quite different, and certainly more limited.

But I take your point, Your Honor -- I think -- that for purposes of 503, the fact that it specifically acknowledges equity holders as those entitled to seek a substantial contribution award should mean that stakeholders who are pari passu with equity holder are likewise entitled to seek a substantial contribution award.

However, I would point out, Your Honor, that securities claimants are creditors. Their status is not as an equity holder; that treatment is different under the plan. And their status as a holder does not determine whether they have a securities claim or not; it's when they purchased during the

period that's set forth in the claims form that they were required to fill out.

So the fact is that our constituency, our creditors, the Code just happens to subordinate those creditor claims for purposes of distribution. So their rights and their recoveries were very much at stake in these cases, and PERA is obviously one of those creditors.

THE COURT: Okay. And you're about at the twenty-minute mark, so why don't we reserve your ten minutes for rebuttal, and I'll let Ms. Liou make her --

MR. ETKIN: If I could just make one more point, Your Honor --

THE COURT: Yes, yes, sir.

MR. ETKIN: -- which I think is also important, and I alluded to it earlier.

The reorganized debtors' opposition is littered with references to efforts that they claim solely benefitted PERA. In particular, they referenced the initial 7023 motion as a primary example.

We addressed that in the briefing. And obviously our position was that we would've preferred that Rule 7023 apply and be the means to cure the notice issues and the due process violations that the Court determined to exist. Those violations, in fact, were the primary reason why the initial 7023 motion was filed.

So while the Court acknowledged the merits of the 7023 motion, I think you referred to it as a close call at the time, the Court chose the alternative remedy of extending the bar date for securities claims.

Either way, Your Honor, left to their own devices, the debtors would have done nothing. And as for PERA's self-interest, it should be noted that PERA did file a proof of claim prior to the initial bar date. So PERA did not need the extended bar date to file its claim, but the 7,000-plus claimants who filed proofs of claim by the extended bar date were significantly benefitted by PERA's efforts.

THE COURT: Okay. Let's leave it at that. You and Mr. Dubbs will have ten minutes.

MR. ETKIN: Thank you, Your Honor.

THE COURT: Ms. Liou, you have the 30 minutes.

MS. LIOU: Good morning, Your Honor. Jessica Liou from Weil, Gotshal & Manges on behalf of the reorganized debtors.

Your Honor, I'd like to start with the first question and the point that you started with at this hearing because I think it's a very important question. And it's driven by a desire to understand the common sense basis for why PERA should not be entitled to substantial contribution claim.

Now, I think the question that you were getting at is the premise underlying all of the arguments made by Mr. Etkin

and PERA and his counsel, is that they've taken a number of actions which benefit these particular classes of securities claimants under the plan.

However, they are in the unique situation that distinguishes them from every other case where a substantial contribution claim has been granted, where not a single claim has yet been allowed and determined to be valid in those classes. And it strikes me as somewhat absurd, and definitely defying common sense, to allow PERA to have a substantial contribution claim on account of actions it's taken to "benefit" this class when it's not clear yet whether the class actually has received a benefit.

THE COURT: Well, but what about my question to Mr. Etkin. I mean, you're going to -- you have persuaded me to adopt a procedure where you're going to be making offers. So I presume you're making offers that could be accepted, so everybody who accepts your offer is going to be benefitting, isn't it?

MS. LIOU: Absolutely. But I think you know as well as anyone that accepting orders through a mediation and compromising your own claim does not give you a substantial contribution claim under the case law. And we can quote specific cases that say that including your case, Your Honor, in PG&E, I believe where you say "settlement and settlement conferences are part of the fabric of bankruptcy". I'll also

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remind you that those procedures were procedures that the debtors' proposed. And we propose them precisely so that we could move ahead and try to expedite the settlement process.

But again, the standard for substantial contribution is one where PERA and its attorneys are held to a very, very heavy burden, an incredibly high standard. It's substantial contribution, which means that their actions have to be rare, extraordinary. And the actions that they've taken in these cases are nothing different than what you would expect any creditor to take in a case, such as participating in a disclosure statement process, participating in a plan process, and commenting on a bar date noted for disclosure; and I can go through that in a lot more detail in a minute, Your Honor.

I think, Your Honor, just to jump to your question number 2, we completely agree that the standard for determining whether or not there is a substantial contribution claim is taking a look at the benefit to the estate.

Our terminology, benefit to the estate as a whole, wasn't even --

THE COURT: But the statute doesn't say benefit of the estate. It says "substantial contribution".

MS. LIOU: That's right, Your Honor.

THE COURT: Period. The phrase --

MS. LIOU: That that can be right, how --

THE COURT: -- to the estate isn't there.

MS. LIOU: I completely understand.

THE COURT: Okay.

MS. LIOU: But as you know, because you've acknowledged this in your decisions as well, dealing with substantial contribution issues, the statute doesn't actually define what substantial contribution means.

THE COURT: Right.

MS. LIOU: And so the caselaw that is developed around that terminology has very consistently held that the appropriate standard is benefit to the estate, and I think you --

THE COURT: Well, but Ms. Liou, your brief -- or Mr. Slack signed it -- but the phrase, as a whole must've been repeated eight times. But can't there be a benefit to some section, some portion of the estate to still be a contribution? Because if not, then what did Congress mean when it said that substantial contribution claims can be asserted by equity holders. Well, when do equity holders benefit creditors? Not often.

MS. LIOU: Well, I think you can always benefit equity holders when you determine that the actions that a party has taken has resulted in either an increase in the residual value available to equity holders or somehow avoided the incurrence of substantial litigation costs, time and delay, that would otherwise reduce the residual value entitled -- that

equity holders would otherwise be entitled to.

I'll also note that there are cases that do say that to the extent that the actions taken by a creditor benefit just one singular class of similarly situated creditors, then that contribution should be given even lighter weight. And I think that's an acknowledgement of the fact that when most of the actions taken by a particular creditor are driven by self-interest. And it's not the motivation that matters, Your Honor, don't mistake me, right, that's not what I am getting after. It's just that part of the test is, if you're taking actions that you otherwise would have taken to defend your own interests and you're not doing anything out of the ordinary, then you haven't really taken actions that rise to the level of substantial contribution.

Your Honor, I do think it is worth looking at the facts here to help answer number two. Let's look at the arguments that PERA has made.

They focused most of their substantial contribution claim on the actions they've taken in connection with the bar date, plan confirmation, and the disclosure statement process. Well, let's look at the bar date process.

PERA asserts that they are the direct cause of thousands of securities action claimants being able to file proofs of claim, and receiving due process. Well, the facts in the record demonstrate otherwise.

The facts in the record demonstrate, including through the declarations that PERA attached in support of its motion for substantial contribution, that Mr. Dubbin, Mr. Etkin, Mr. Michelson (sic) at their firm, received a copy of the bar date motion in May 20 -- '19, May 2nd, 2019, reviewed it, and actively chose not to file an objection to the bar date motion. It's like --

THE COURT: You know I've got to ask you -- you were here early in the case, and so was I, and so was Mr. Karotkin -- if PERA had never made the 7023 motion at all, what would have happened to the securities claimants?

MS. LIOU: They would have kept their claims.

THE COURT: That's right. That's right. They would've been out. The door to the bankruptcy court would have been closed because the debtors didn't open it. Am I to ignore that?

MS. LIOU: No. I think, Your Honor, it's important to keep in mind that we're talking about actions that have to be the direct -- directly lead to any benefit. And all I'm saying, Your Honor, is that the direct cause of the benefit to those securities claimants is you. You decided to deny PERA's 7023 motion, which is the cause of the extension and application of the bar date.

THE COURT: There's something --

MS. LIOU: Specifically, with the --

THE COURT: There's something wrong with this picture, Ms. Liou. I denied it because I had two unhappy alternatives. But I would've had no alternative if PERA had never made its motion. The debtors -- and I don't want to personalize this -- the debtors didn't do one thing to give the securities claimants an opportunity to file a proof of claim; in fact, the reverse. It said, door's closed. How can I ignore that? And how can I ignore the fact that the but-for, and the reason why there are 7,000 folks at the table, is because PERA made a motion that they lost.

MS. LIOU: Your Honor, I want to clarify one thing. I don't think that's --

THE COURT: Okay.

MS. LIOU: -- (audio interference) at all.

THE COURT: Okay.

MS. LIOU: What I meant by that is, look. There were securities debt claims. The securities debt claims would have recovered in full to whatever extent they would have been allowed. They fell within the general unsecured class under the claimant's plan. By separately breaking them out, we were simply acknowledging that they were a different class of claims that could be treated differently under the plan.

But I don't think that there would've been any substantive differences to the treatment. The fact of the matter is, in a fully solvent case, you would be able to get

your claim paid in full, to the extent that it would be determined to be allowed, and those were claims. All holders of pre-petition claims had to file proofs of claim by the bar date. Those were holders of pre-petition claims.

THE COURT: Well, they didn't have to file a claim if they were deemed allowed, but the point is that they weren't even given an opportunity to file a claim. The notice of the original bar date specifically said don't file a claim, right? Don't file a claim.

MS. LIOU: I don't believe that that's what it said, but --

Mr. Karotkin?

THE COURT: Well, I don't remember --

MR. KAROTKIN: Your Honor, that's not -- Your Honor, let me just interject. That's not what it said. What the initial bar date order said, Your Honor, was that if you had a pure equity claim, a pure equity claim, you're not obligated to file the claim. It in no way said that people who have, as Mr. Etkin acknowledged, a monetary damage claim based on equity, were not required to file a claim. And we will note, Your Honor, we believe that notice -- and we've consistently said that, that notice of the original bar date was totally in compliance with due process. You obviously disagreed. People were given the opportunity to file claims.

And by the way, Your Honor, Mr. Etkin and his

colleagues actively objected to your suggestion, actively objected to your suggestion, of an extended bar date and indeed appealed the whole thing, and now they want credit for it.

THE COURT: Okay. Okay. Back to Ms. Liou.

MS. LIOU: Yeah, Your Honor, so I think we can move on. But our only point there was that the record very clearly demonstrates that the application and extension of the bar date to securities claimants was not a direct result of PERA's efforts. It was in spite of their efforts to oppose that direct notice.

Moving onto the disclosure statement, approval, and plan confirmation process, you know, PERA alleges that its objections to the disclosure statement and the Chapter 11 plan resulted in changes to treatment and classification that should be viewed as providing a substantial contribution in these cases because they benefitted securities claimants. It also asserts that it facilitated the timely confirmation of the plan by resolving a plan objection and otherwise working with the debtors through the court-ordered mediation. Again, this is not true. Let's look at the facts.

PERA did object to the disclosure statement, and so did 20 other parties. PERA did object to the plan, and so did 27 other parties. PERA then prosecuted its plan objection down to the wire. And the fact that PERA then engaged in court-directed mediation to resolve certain of its objections, again,

PG&E Corporation and Pacific Gas and Electric Company

is irrelevant to the determination of substantial contribution claim.

If you were to accept, Your Honor, PERA's argument, and extend it to its logical conclusion, then any creditor, any equity holder that objects to approval of a disclosure statement or confirmation of a plan that results in some changes that could be viewed as a benefit for some folks, and then also decides to resolve a portion of its objection, could be entitled to a substantial contribution claim. And I think it's very clear that this is not the law.

In fact, as I mentioned before in PG&E, you mentioned that settlement and settlement conferences are part of the fabric of bankruptcy. A creditor cannot establish a substantial contribution claim for suggesting or supporting a court-supervised settlement conference; that's clear. Those are your words.

In American Plumbing, the Court there noted that expected or routine activities in a Chapter 11 case do not constitute substantial contribution. Expected or routine activities in the guise of extensive or active participation also cannot substantiate substantial contribution. Examples of these activities include proposing agreeable terms through negotiation and commenting on the disclosure statement and the plan of reorganization. This is also consistent with the holding in the Standard Metals case, which we have included a

summary of in our brief as well.

And there's a reason that the law provides these constraints, Your Honor. To hold otherwise effectively opens the floodgates for potential claims, substantial contribution claims, from basically 47 other parties who also participated in the disclosure statement and plan confirmation process.

Numerous courts agree that the integrity of 503(b) can only be maintained by strictly limiting compensation to extraordinary creditor actions, which then lead to a significant and tangible benefit. What can be more ordinary and expected in a Chapter 11 process than creditors participating in the plan process and the disclosure statement of process, to try to improve upon the treatment of claims in their own class or their own claims, and whatever consider they are to receive under a plan. I'll note also that any benefits that other securities claimants may have received were only incidental to the benefits that PERA obtained by prosecuting its interest in its objection.

THE COURT: I'm sorry, would you just repeat that again please? I just did not -- I'm trying hear you.

MS. LIOU: Sure, Your Honor. That any benefits that other securities claimants may have received were only incidental to the benefits that PERA obtained by prosecuting its interest in its objection. And I think that you, as well as -- you will know better than anyone else that there are

cases that note that ancillary benefits, again, do not rise to the level of substantial contribution.

Your Honor, we've mentioned this before, but I think it bears repeating again, that this is a very high standard. And if you look at the circumstance where courts have actually found substantial contribution, they basically fall in one of three main buckets: You have creditors who have acted as plan proponents, creditors who have provided exit financing or were instrumental in obtaining third-party sources of financing on which a plan was dependent, or a creditor who has significantly compromised its own claim or litigation rights to increase the funds available for distribution to other stakeholders, and that hasn't happened.

I know PERA likes to measure itself against a subrogation -- subrogation claimants, the tort claimants, the noteholder claimants, and also the public entities in these cases, arguing that their efforts are tantamount to the kinds of compromises that those parties made in this case. That cannot be further from the truth.

Under those settlements, as you know, Your Honor, the subrogation RSA for example, twenty billion dollars of claims settled and liquidated at eleven billion dollars; an eight-billion-dollar discount agreed to by those holders. That settlement also dispensed with potentially costly and lengthy estimation proceedings, saving the estate significant money.

Same thing with the tort claims RSA. Over 36 billion dollars of asserted claims, settled for approximately 13.5 billion in value. The resolution included a stay of the estimation proceedings, and a settlement of the Tubbs trials, which were proceeding in state court. The noteholder RSA settled the treatment of pre-petition-funded debt, make-whole premium entitlement, and other issues, which implicated over five billion dollars of potential claims.

THE COURT: Well, but none of them made 503 motions. None of those three came in with 503 motions.

MS. LIOU: Right.

THE COURT: What would you have done if they had?

MS. LIOU: Yeah, that's right, Your Honor. And in addition, that RSA reduced PG&E's long-term borrowing costs by a billion dollars. It also provided certainty for over eighty percent of the debtors' exit financing needed to emerge from the Chapter 11 cases. It settled multiple pending litigations, including the opposition to the exit financing motion, the reconsideration of the tort claimants' RSA, and subrogation claimants' RSA filed by the noteholders.

Same thing with the public entity settlement, where billions of dollars of claims were settled for one billion dollars avoiding the need for another costly and potentially lengthy --

THE COURT: Yeah, but again, you keep making a list

of things of people who didn't file 503 motions. Therefore, why are they relevant to whether PERA should get one or not? They were --

MS. LIOU: Well, the --

THE COURT: -- major developments, there's no question, they were major developments.

MS. LIOU: Yes.

THE COURT: But no one can --

MS. LIOU: Well, I am --

THE COURT: -- no one cannot be paid for them.

MS. LIOU: -- I'm talking -- yeah.

THE COURT: Huh? What?

MS. LIOU: Your Honor, sorry, I did not mean to interrupt.

THE COURT: It's all right. Okay.

MS. LIOU: The only reason I raised them is because PERA is drawing a comparison of their action to the actions taken by those other parties and arguing that because those other parties agreed to a consensual resolution with PG&E, and PG&E was willing, under those consensual arrangements, to pay some portion of the professional fees and costs and expenses incurred by those parties, that somehow should act as a transitive principle in these circumstances to force PG&E to pay for the costs and associated expenses incurred by PERA, and that's just not true, right?

It all ties back to the fact that under the caselaw, PERA hasn't done anything that rises to the level where substantial contributions would be found. It has not acted as a plan proponent. It has not provided financing or funding for these plans. It has not chosen to settle and liquidate its own claims or give up litigation causes of action that somehow provide additional value distributable to other securities claimants, or even residual value available to the equity holders.

Your Honor, I think the last point that I would like to make in this regard is just the observation that you made in PG&E, which is in a complex case and a difficult case like this one, where so many parties made so many contributions, it is difficult to single out the contributions of any particular party as substantial. And that is true, absolutely true, in this case, as well.

THE COURT: And you're talking about the Palo Alto decision which was from day one, Palo Alto was in on its own, and never spoke for anyone else. So you at least concede that that's a fact difference, wouldn't you?

MS. LIOU: However, I do think that Palo Alto did make the argument that its actions not only benefitted itself, but benefitted other people, so --

THE COURT: Well, I don't remember that, i.e., it may be that that's happened, I just don't remember that. That's

okay, go ahead. I mean, they were different. They were certainly different.

But that's the -- am I correct, Ms. Liou, that it was my decision in Palo Alto PG&E is the only thing you're referring to, right?

MS. LIOU: Yeah, that --

THE COURT: You're not --

MS. LIOU: -- that's correct.

THE COURT: I didn't make some other decision --

MS. LIOU: Your decision in Palo Alto PG&E, I'm sorry, Your Honor, yes.

THE COURT: Right. No, that's right. I thought so when it was mentioned in the briefs, and I thought I remembered that -- I would've remembered anybody else that came up, but I don't think it did. Okay. I got it.

But you have more time if you want. You don't have to use it but --

MS. LIOU: Yeah. Your Honor, I think it probably makes sense to address your questions 3 and 4 very briefly, and then see what else Mr. Etkin wants to add.

So I think your question number 3, How does the outcome of the district court action -- and I'll paraphrase -- have any relevance to whether plaintiffs can recover anything from the reorganized debtors for substantial contribution to these cases.

Similar to the point that we started with, our view is that a lot of the actions that PERA is taking are, PERA admits, actions that it takes as its fiduciary on behalf of its client. And we expect that as the district court proceedings continue to proceed, and if PERA were to come to the point where there is a judgment in their favor, they would be requesting fees and expenses, and there is the risk that there would be double-dipping there.

THE COURT: Well, why would there be? Why would there be? They can't -- I doubt that Mr. Etkin is going to go in front of a district judge, in a case with no debtor defendants, and argue that he helped things by a claims bar date or plan confirmation or all of the things that you have faulted him for here because he'd get laughed out of court. To say that the class that are involved in -- excuse me, that the defendants who are not debtors should pay for things that have to do with this case.

In other words, what I -- and I'm not saying it very well -- to me, the bankruptcy case that happened here is quite different from whatever will happen there, and they're two different arenas and two different measures of value, right? I mean, how do you get them --

MS. LIOU: Well --

THE COURT: -- how do you merge the two concepts?

MS. LIOU: Yeah, I'm not so sure about that, Your

Honor, because I think that when it comes time for an application for perspective for the payment of fees and expenses, I haven't heard anything from Mr. Etkin, or PERA's counsel, indicating that they would not seek any kind of compensation in connection with the district court actions, on account of any of the work that they're doing that could be related to the Chapter 11 case.

THE COURT: Well, I mean but do you think that they could make the argument with a straight face that somehow they should be paid in an action against officers and directors for things that they did, from their point of view, to improve the outcome for the participants in this case? I mean, I guess they could make the argument --

MS. LIOU: Yeah, I --

THE COURT: -- but I don't know that they've committed to making it.

MS. LIOU: No. I know it's not an argument I would make, but I can't --

THE COURT: Okay.

MS. LIOU: -- speak for PERA.

THE COURT: Okay. All right. Anything else?

MS. LIOU: I don't think so, Your Honor.

THE COURT: Okay.

MS. LIOU: I think on your question/statement for number 4, I don't think that there's any disagreement from us,

any particular observation.

THE COURT: Yeah, well, what struck me as (audio interference) to so many of the decisions are benefit to impact on creditors. And sure, it's easy. It's easy in a case where solvency is not an issue -- I mean, where insolvency is given, that if you benefitted somebody else, that might be compensable, but it doesn't seem to fit the same analysis in a solvent estate. That didn't -- you made the point on that, and I don't -- let's leave it at that. Thank you very much, Ms. Liou.

MR. KAROTKIN: Your Honor, can I mention --

THE COURT: Mr. --

MR. KAROTKIN: -- just two --

THE COURT: Well --

MR. KAROTKIN: -- things?

THE COURT: -- you can use a little of your colleague's time.

MR. KAROTKIN: Okay. Thank you. I'll be brief.

A couple of things. Number one, for Mr. Etkin to suggest that they were instrumental in achieving the June 30th confirmation decision and that but for their mediation, that would've never occurred, that's preposterous. You made it abundantly clear, Your Honor, throughout the case, and particularly at the confirmation hearing and, Your Honor, with respect to their objection, you were not going to let that hold

up the June 30th date. They don't deserve any credit for that, they're not entitled to --

THE COURT: But they haven't held it up either, right? In other words, if they are successful on their appeal --

MR. KAROTKIN: They were not --

THE COURT: -- it doesn't affect --

MR. KAROTKIN: -- they would have never held it up. They would have never held it up.

THE COURT: Right.

MR. KAROTKIN: Impossible.

THE COURT: Okay.

MR. KAROTKIN: Okay? Moreover, if you look at what they did throughout the case, it's basically a string of losing efforts. They opposed your bar date notice. They lost 723 (sic). They lost the renewed 723. They lost the ADR. Their confirmation objection was effectively just resolved, like anything else that's resolved. As Ms. Liou said, if you resolve a confirmation objection, you're entitled to a substantial contribution claim? I don't think so.

But let me suggest something, Your Honor. If you're inclined to consider this, and I don't think there's any basis for it, I would suggest that you defer consideration of this motion until we see what happens in the case with respect to the claims that are filed, with respect to the district court

action in the motion to dismiss, which addresses the legal history --

THE COURT: Well, I may have retired by then.

MR. KAROTKIN: I will certainly be retired by then, but without prejudice, let's wait a little while to see what happens.

THE COURT: Well, but again, Mr. Karotkin --

MR. KAROTKIN: We don't have to do this.

THE COURT: Mr. Karotkin, what if tomorrow, the district court granted the motion to dismiss the district court action, out --

MR. KAROTKIN: Then --

THE COURT: -- threw it out, would that -- what would happen to the argument that PERA's making in this case, for their contribution here?

MR. KAROTKIN: Your Honor, it would certainly address the issue you raised at the beginning of the case as to the validity of these claims. It would certainly address that. And that's a good idea. Let's wait a little while to see what --

THE COURT: But what would happen --

MR. KAROTKIN: -- happens --

THE COURT: But Mr. Karotkin, what would happen to the ADR procedure, and the offer and acceptance proposal that you persuaded me to go with? Does that mean it's off the

table?

MR. KAROTKIN: It wouldn't be off the table, but it would certainly limit things before Your Honor and limit the validity of these claims in a big way, in a big way. And what is the harm of waiting a few months to see what happens without prejudice --

THE COURT: Well --

MR. KAROTKIN: -- to the renewal of the motion?

THE COURT: Mr. Karotkin, I'm not in the business of faulting and criticizing my fellow judges, even if they are Article III judges, or even if they're not Article III judges, but when a motion to dismiss has been under advisement for ten months, I'm not very sanguine about taking a little bit longer because it might be ten more months, or twenty more months. I have no control over that.

MR. KAROTKIN: It might, and -- it might, Your Honor, and it might not.

THE COURT: Yeah, right.

MR. KAROTKIN: And to defer this for some period of time -- look, it can always be revisited.

THE COURT: Okay. Mr. Etkin, you have closer for ten minutes, or unless you want Mr. Dubbs to join you. Oh, wait, you've got to turn your mic back on Santa Claus. There you go. No, Mr. Etkin, you turned your camera off, and left your mic off, so -- all right. There's your -- now, turn your mic --

there you go.

Now, which of you is going to make the closing argument?

MR. ETKIN: I'll start us off, Your Honor, and if Mr. Dubbs want to add anything, I'm sure he won't be bashful.

But some of the things I just heard, Your Honor, are, frankly, downright offensive. I don't think we ever took the position that but for our efforts, the plan wouldn't have been confirmed. That's not the point we've raised at all. Mr. Karotkin is prone to hyperbole, but that's a little over the top.

We took the position that we helped in the process. We aided the process. We raised issues that the debtor would've ignored as it relates to 7,000-plus claimants, not just a few people, stragglers who came in, but 7,000-plus claimants who asserted in excess of six billion dollars' worth of claims. That's a significant constituency in anybody's case.

And not like the few cross-section of bondholders from the case that Ms. Liou cited, where the efforts also cost unsecured creditors some recovery. That did not happen here. As I said, Your Honor, before, unsecured creditors, fire victims, subrogation claimants, it didn't cost them a dime, and wouldn't cost them a dime with respect to the substantial contribution award that we're seeking.

And Your Honor, the idea of now relitigating the issues with respect to the original 7023 motion, that's revisionist history at its worst. Your Honor made a decision. Your Honor has indicated that while we did not achieve 7023 recognition, the extended bar date was the alternative, as the Court pointed out; that you chose to remedy the due process and notice violations that the Court found. To relitigate that now, is just not appropriate. The law is what the law is.

THE COURT: What do you think -- wait a minute.

MR. ETKIN: The case --

THE COURT: Wait a minute, Mr. Etkin.

MR. ETKIN: The determination was what it was.

THE COURT: Mr. Etkin --

MR. ETKIN: I'm sorry.

THE COURT: -- what do you think -- no, I -- what do you think would've happened if you had never filed your original 7023 motion?

MR. ETKIN: 7,000-plus claimants would've been out of luck.

THE COURT: But what would've happened to them, under the plan? In other words, leave aside --

MR. ETKIN: Under the plan, they would have gotten --

THE COURT: -- what I am asking you to answer is, if I accept the argument that if you had not filed the original motion, the debtor wouldn't have sought a new bar date, so what

would've been the fate of all of the class -- the three classes, both bondholders, and equity holders? What would've been their fate?

MR. ETKIN: They would not -- their fates would have been that they would've been disenfranchised in the case because they would not have filed proofs of claim by the original bar date. And again, I'm talking about securities --

THE COURT: What would they have been --

MR. ETKIN: -- claimants.

THE COURT: -- would their debts have been discharged?

MR. ETKIN: Well, of course their debts would've been discharged, Your Honor.

THE COURT: Well, would they? Would they?

MR. ETKIN: Unless somebody came in down the road and made the argument that we made that they were denied constitutionally directed due process.

THE COURT: No, let's break the -- let's forget 510(b), the statutory subordination, and recognize that the universe of people that you are speaking for are either bondholders or shareholders. So what would've happened to a bondholder who claims to have been defrauded, or had been an equity holder who claims to have been defrauded, if there had never been your motion, and therefore no extended bar date? Would the debts be discharged? Would they be out there free to

be pursued now, post-bankruptcy as not be affected by the plan?

MR. ETKIN: That would be -- Your Honor, ultimately that would be premised on whether they decided to take affirmative action on their own, having never received notice of the bar date as it relates to their securities claims, but to the extent that they're holders, Your Honor, of equity, or holders of bonds, those claims would not have been impacted. It's solely the securities claims that would have been impacted because without a proof of claim filed in connection with the securities claim, whether by virtue of being a holder or not being a holder, is not relevant to the determination of whether they purchased during the class period, so --

THE COURT: Right, it's whether they suffered, whether they were defrauded, to use the term generally; not whether they were a bondholder, or a shareholder, but whether they were defrauded, right?

MR. ETKIN: Whether they were victimized by a violation of the securities law, Your Honor.

THE COURT: Okay. So if one of those 7,000 people never knew about the bar date because they never got served, and your motion and the follow-up claims bar date had never happened, you believe those people, whether they were equity holders or bondholders, they would be out and discharged?

MR. ETKIN: I believe that they would be, unless they came back in front of Your Honor and litigated the very issue

that we litigated in (audio interference).

THE COURT: Well, no, I understand but that's another hypothetical. What your point is that the debtors didn't do anything except be reactive to your motion, and that even though you lost the motion, it led to the debtor doing something that facilitated 7,000 folks getting to file claims. Isn't that your theory?

MR. ETKIN: That's not a theory, Your Honor, that's a fact.

THE COURT: Okay. Well, okay.

MR. ETKIN: And Your Honor, the alternative remedy that the Court fashioned was a remedy to deal with the issues that we brought to light in connection with the 7023 motion. We may not have been successful in convincing the Court at the time to employ a Bankruptcy Rule 7023 --

THE COURT: Right. Right.

MR. ETKIN: -- but the bottom line, as the Court has previously recognized, was that the bar date was extended, and these folks got the opportunity to file claims. Without that opportunity, they would've had nothing, and they wouldn't have been able to proceed, absent some kind of effort post-confirmation, claiming that they're not bound by the bar date.

THE COURT: Well, okay.

MR. ETKIN: Okay.

THE COURT: But I mean that, again, isn't what we're talking about. If somebody beyond the first 7,000 shows up tomorrow and says I want in, that -- we'll deal with that later.

MR. ETKIN: Well --

THE COURT: You're speaking here on behalf of the benefit of your efforts that led to those 7,000 folks getting invited into file their claims. Okay.

MR. ETKIN: That's correct, Your Honor, and then enhancing their potential recovery. And the idea of sitting around -- I have never -- I've never seen, although the debtor argues that 330 is applicable, I've never seen a situation where folks were told that they should wait to see the outcome of litigation or outcome of claims before you can evaluate whether there was benefit bestowed in connection with the efforts.

As I said previously, Your Honor, that's measured at the time that the services were rendered, according to the debtors' own theory in their papers. That's not --

THE COURT: Well, that's certainly a very fundamental concept that's well-established in Section 330. And listen, I used to be a debtors' lawyer, and I lost a lot of motions for relief from stay, but I still thought I could get paid for making good faith motions to make them.

But the point is that on the other hand, wouldn't you

agree that if the district court tossed the entire action out tomorrow, it wouldn't be good news for your side, even in this 503 context, would it?

MR. ETKIN: Your Honor, I don't know how much of an impact it would have in a 503 context, but I can certainly tell you that it would not be welcome news, but that's what appellate courts are for, Your Honor.

THE COURT: Right. No, I understand.

MR. ETKIN: And it wouldn't be the first time that a securities complaint was dismissed with leave to replead, and then you're back in the game again.

So a lot of different things could happen. There are several different hypotheticals. We're dealing with the here and now and what was accomplished in these cases. And the parade of losses that Mr. Karotkin seems to like to talk about -- several of which are not even involved in the 503 application because they occurred subsequent to the -- to the period reflected by the 503 application -- but we did succeed with respect to the 105 injunction, we did succeed with respect to the derivative action.

I would say that we did succeed with respect to the 7023 motion, in terms of preventing a large swathe of claimants from being disenfranchised in this case, and we took that forward through confirmation. The treatment was enhanced. The issues, which the Court itself characterized as unique, were

resolved, were mediated -- save one, which the Court ultimately decided -- and did not impact on confirmation.

Your Honor, I think that the efforts and the results are self-evident, and the idea that Ms. Liou is talking about double-dipping before the district court -- out of one side of her mouth is the fact that there's a risk of that; out of the other side of her mouth is that she can't speak for PERA, but she chose to anyway, in terms of what we would do.

I'd prefer to think, Your Honor, that to the extent that there was, as there should be in our case, a 503 -- the granting of the 503 application, that that would -- that whatever fees were awarded, at the very least, would dilute less the recoveries of these claimants down the road. But there would be no double-dipping, and the idea that --

THE COURT: Well, but what --

MR. ETKIN: -- that's even suggested is offensive, Your Honor.

THE COURT: What you're saying is that of you ever get to stand in front of the district court in San Jose to get paid, you're not going to tell the district judge you did a great job in getting the disclosure statement straightened out or the claims bar date extended in the bankruptcy court. I presume you wouldn't do that.

Okay. Anything else? Because we're just about at our agreed time.

MR. DUBBS: Your Honor, if I may, just a point of personal privilege.

THE COURT: Yes, sir, Mr. Dubbs. If you could state it for the record. I need your name on the record.

MR. DUBBS: Yes, Your Honor, Thomas Dubbs for PERA.

Just on the issue of double billing, we have separate accounting for ours between the bankruptcy case and the district court case. So the odds of any time being recorded, let alone being submitted to Your Honor that was really district court case or vice a versa, is highly unlikely, and I think Your Honor should appreciate that the odds of me going before a district court and having time entries that say discussion with Judge Newsome about 510(b) would be very-well received by the district court.

Beyond that, on the point of the discharge or not. In addition to the discharge, you have a very broad plan injunction. So even if there wasn't a technical discharge, there would be a preclusion of any other action, assuming that the plan injunction was similar to the one that was finally entered by the Court.

And finally, at this point, one should keep in mind that on the district court side, number one, there are different policy choices that have been made. And one of the policy choices that have been made is that if we prevail or get a settlement in the district court, our fees will be based upon

at least in the Ninth Circuit, a presumptive twenty-five percent of whatever the pot is. They're not based upon our hourly rates, which is the standard here.

So what's at stake here, and the risk-reward, even in the event of a loss there, it's different because the value of a win there is worth more.

And in any event, the district court has before it issues dealing with the duties and liabilities of the directors and officers, and the duties and liabilities of the underwriters, and yes, it's intertwined with what's before Your Honor, but it is separate at the same time.

So even if that case went away, it depends upon how it went away, and when it went away, and I doubt it's going to go away soon. Thank you for your time. And again, I apologize (audio interference) --

THE COURT: And I'm taking my earphones off because I don't have to hear you anymore, because I'm not going to -- I don't need any more argument.

I want to thank you, Ms. Liou, Mr. Karotkin, Mr. Dubbs, Mr. Etkin, for your argument and presentation. It will come as no surprise to you, I'm going to take the matter under advisement and do my best to do it fairly quickly, but no promises.

And so with that, I'll wish you all happy holidays, and stay well, and conclude the hearing. Thank you very much.

MR. DUBBS: Thank you.

MR. KAROTKIN: Likewise, Your Honor.

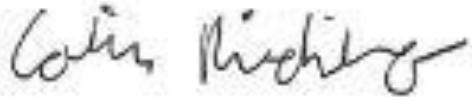
MR. ETKIN: Thank you.

MR. KAROTKIN: Have a good holiday.

(Whereupon these proceedings were concluded)

C E R T I F I C A T I O N

I, Colin Richilano, certify that the foregoing transcript is a true and accurate record of the proceedings.



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/s/ COLIN RICHILANO

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Date: December 16, 2020

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